

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

BILLY JOE NOBLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 1:16-CV-204 CDP

MEMORANDUM AND ORDER

This matter is before the Court upon review of the file. On July 25, 2016, petitioner Billy Joe Noble filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner's sole basis for relief was under the United States Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), which was decided on June 26, 2015. Petitioner signed the motion on July 11, 2016, after the expiration of the one-year statute of limitations provided in 28 U.S.C. § 2255(1).

Noting that the motion appeared to be time-barred, the Court, on September 8, 2016, directed petitioner to show cause why it should not be dismissed pursuant to Rule 4(b) of the Rules Governing § 2255 Cases in the United States District Courts. Petitioner's response was due in this Court on October 10, 2016. To date, despite being afforded ample time to comply, petitioner has neither responded to the Order, nor requested additional time in which to respond. This action will therefore be dismissed as time-barred.

Petitioner has failed to make a substantial showing of the denial of a constitutional right, which requires a demonstration "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." *Khaimov v. Crist*, 297 F.3d

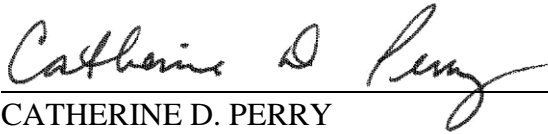
783, 785 (8th Cir. 2002) (quotation omitted). Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that petitioner Billy Joe Noble's Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Docket No. 1) is hereby **DISMISSED** without prejudice as time-barred. See Rule 4 of the Rules Governing § 2255 Proceedings. A separate order of dismissal will be entered herewith.

IT IS HEREBY CERTIFIED that an appeal from this dismissal would not be taken in good faith. 28 U.S.C. § 2253(c).

Dated this 7th day of November, 2016.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE